

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>In re the Application of:</b> Joseph BACH <b>APPLN. NO.</b> 09/327,085 <b>FILED:</b> June 4, 1999 <b>ENTITLED:</b> SYSTEM AND METHOD FOR SOLICITING AND RECEIVING MERCHANDISE ORDERS	<b>Group Art Unit:</b> 3629 <b>Examiner:</b> VIG, Naresh
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**Application for Patent Term Adjustment**

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This Application for Patent Term Adjustment is filed pursuant to a Notice of Allowance, dated July 22, 2011, in which a patent term adjustment of 1847 days is indicated. Attached to this request is a copy of the webpage from PAIR, showing the calculation of the term extension. Applicant respectfully requests recalculation of the term under 35 U.S.C. 154(b)(1)(A) of 556 days plus recalculation under 35 U.S.C. 154(b)(1)(C) of 2956 days, resulting in term extension of 3512 days. Alternatively, Applicant respectfully requests recalculation of the term under 35 U.S.C. 154(b)(1)(B) of 3327 days. Either of these adjustments may potentially be reduced by 27 days, to result in extension of either 3485 days or 3300 days, respectively.

**I. Adjustment Under 35 U.S.C. 154(b)(1)(A) – FAILURE TO TAKE CERTAIN ACTIONS  
WITHIN SPECIFIED TIME FRAMES**

Applicant believes that the correct term adjustment under 35 U.S.C. 154(b)(1)(A) should be 556 days.

The subject Application was filed on June 11, 1999. Under the provisions of this Section, the first office action should have been mailed no later than 14 months from the

filing date, which would have been August 4, 2000. However, the first office action was mailed on February 11, 2002, which is 556 days passed the required date.

## II. Adjustment Under 35 U.S.C. 154(b)(1)(B) - GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY

Applicant believes that the correct term adjustment should be 3327 days.

Alternatively, Applicant believes that the correct term adjustment should be set at 3300 days, which equals 3327 days less a reduction under § 1.704 of 27 days.

Reasons:

The subject Application was filed on June 11, 1999. Pendency of three years would have concluded on June 11, 2002. The patent office failed to issue the patent by the three years pendency. The time difference from June 11, 2002 to the mailing of Notice of Allowance, i.e., July 21, 2011, is 3327 days. Thus, the patent term should be extended under 35 U.S.C. 154(b)(1)(B) by 3327 days.

Applicant did not fail to engage in reasonable efforts to conclude prosecution of the application. Notably, during the three years pendency of June 11, 1999 to June 11, 2002, Applicant timely responded to office actions. However, on February 24, 2003, Applicant filed a request for extension, which was 27 days after the shortened three month period for responding to an office action. Thus, under § 1.704, the PTO may reduce the term extension by 27 days, to result in 3300 days.

## III. Adjustment Under 35 U.S.C. 154(b)(1)(C) - GUARANTEE OR ADJUSTMENTS FOR DELAYS DUE TO APPEAL

Applicant believes that the correct term adjustment should be  $1109 + 1847 = 2956$  days.

Alternatively, Applicant believes that the correct term adjustment should be set at 2929 days, which equals 2956 days less a reduction under § 1.704 of 27 days.

As can be seen from the attached patent term extension history, a final rejection was mailed on June 28, 2002. A response to the final rejection was timely filed within the three months shortened period, i.e., on September 24, 2002. An advisory action was mailed on

October 15, 2002, in response to which a Notice of Appeal was promptly filed on October 28, 2002. For no apparent reason, the Advisory Action was then mailed again on November 19, 2002 and January 16, 2003. An appeal brief was filed on February 24, 2003, with a request for one month extension. Thus, the patent term adjustment should be counted from this date of the filing of appeal brief, with possible reduction of 27 days pursuant to the petition to extension of time filed by Applicant.

What followed is rather bizarre, as the examiner failed to address Applicant's appeal for almost three years! Then, the examiner simply issued a final office action, totally ignoring Applicant's Notice of Appeal and Appeal Brief. Notably, no Examiner's Answer has been filed during the 3 years period from Applicant's filing of the Appeal Brief and the Examiner's issuance of the Final Office Action. In response, Applicant promptly filed a request for reinstatement of the appeal, together with the original appeal brief, augmented to address the new issues raised in the examiner's final rejection. That is, the delay period from February 24, 2003, the date the original appeal brief was filed, to March 9, 2006, the date of the request to reinstate the appeal and re-filing of the appeal brief was caused entirely by mishandling of the application by the Examiner.

This Application is not subject to a Terminal Disclaimer.

Respectfully submitted,

Dated: September 18, 2011

/JBach/  
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